INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement	2
Specification of errors to be urged	3
Reasons for granting the writ	4

CITATIONS

Case:	
David Burnet v. *Julia Butterworth*, No. —, October Term, 1982	4

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

FIDELITY-PHILADELPHIA TRUST COMPANY, TRUSTEE Under the Will of William L. DuBois, Deceased

---

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of David Burnet, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Third Circuit entered in the above cause on March 4, 1933, reversing a decision of the Board of Tax Appeals (R. 59).

OPINIONS BELOW

The opinion of the Board of Tax Appeals (R. 35) is reported in 25 B.T.A. 1359. The opinion of the Circuit Court of Appeals (R. 57) is not yet reported.

JURISDICTION

The judgment sought to be reviewed was entered March 4, 1933 (R. 59). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a testamentary trustee is entitled to deduct, in computing the net income of the trust, amounts which are distributed to the testator's widow who elected to take an interest in the trust created by the will in lieu of her dower and statutory interests in the decedent's estate.

STATEMENT

The material facts, as stipulated and found by the Board (R. 22, 36), may be summarized as follows:

The respondent is a Pennsylvania corporation and is the successor of the Philadelphia Trust Company as trustee under the will of William L. DuBois, deceased, who died testate a resident of Pennsylvania on October 26, 1918 (R. 22). By his will the decedent left all of his estate, both real and personal, in trust, with directions to pay out of the income therefrom $4,000 per year to his son and the balance to his wife during her lifetime (R. 22–23). The widow elected to take under the will. The amounts paid her by the respondents in 1926 and

1927, the tax years here involved, together with those paid in previous years, did not aggregate in amount the value of the interest to which she would have been entitled had she taken against the will.

In computing the taxable income of the estate for the years involved the respondent deducted from gross income the amounts distributed to the widow. The Commissioner disallowed the deduction thus claimed and asserted deficiencies accordingly. The Board of Tax Appeals approved the Commissioner's action. The court below reversed, one judge dissenting.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that the distributions were of income *qua* income and that the widow was with respect to these distributions a true beneficiary.

2. The Circuit Court of Appeals erred in holding that income, distributed by a testamentary trustee to a widow who has elected to take under the will, is deductible by the trustee although it is not taxable to the widow, thus creating an exemption not contemplated by the revenue statutes.

3. The Circuit Court of Appeals erred in deciding that the amounts distributed by the respondent to the widow in pursuance of the terms of the testamentary trust were deductible by the trustees.

4. The Circuit Court of Appeals erred in reversing the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

This case presents the precise question involved in *David Burnet* v. *Julia Butterworth*, pending before this Court as No. —, October Term, 1932. The reasons relied upon as justifying the issue of the writ are presented in the petition in the *Butterworth case*, to which this Court is respectfully referred.

Respectfully submitted.

J. CRAWFORD BIGGS,
Solicitor General.

MAY 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933